

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X  
UNITED STATES OF AMERICA

07 CR 537 (WHP)

NOTICE OF MOTION

v.

**ECF FILING**

DAVID CARMEL  
-----X

PLEASE TAKE NOTICE that upon the annexed declaration of Donald Yannella, Esq., the accompanying Exhibits, Memorandum of Law, and all papers and prior proceedings had herein, defendant, DAVID CARMEL, will make a motion before the United States District Court, 500 Pearl Street, New York, New York, before the Hon. William H. Pauley, on June 23, 2008 or as soon thereafter as counsel may be heard, for Orders:

(1) Suppressing a post-arrest statement, pursuant to Rule 12 (b)(3) of the Federal Rules of Criminal Procedure on the grounds that it was involuntary and elicited in violation of the precepts of Miranda and the Fifth and Sixth Amendments to the United States Constitution;

(2) Suppressing physical evidence seized from the defendant's Wisconsin residence pursuant to state and federal search warrants on the grounds that the applications were stale, failed to establish probable cause, and were based upon inaccuracies and

falsehoods which require a Franks hearing; that evidence outside the scope of the warrant was seized; and that the inventory and return procedures of Rule 41 were intentionally disregarded;

(3) Directing the Government to disclose *Brady* and *Giglio* material;

(4) Such other and further relief as the Court deems just and appropriate.

Dated: May 9, 2008

Respectfully submitted,

Donald Yannella, P.C.

/s/

By: \_\_\_\_\_  
Donald Yannella (DJY-7350)  
Attorney for David Carmel  
7 Dey Street, Suite 803  
New York, NY 10007  
(212) 226-2883

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

07 CR 537 (WHP)

v.

DECLARATION OF  
COUNSEL

DAVID CARMEL

-----X

DONALD YANNELLA, an attorney duly admitted to practice law in the United States District Court, Southern District of New York, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that the foregoing is true and correct to the best of his knowledge:

1. I am counsel for the defendant, David Carmel. This declaration is based upon information and belief, the sources of which are a review of the Court file, and conversations with witnesses and the defendant.
2. Attached as Exhibit A is a copy of the complaint from the Southern District of New York.
3. Attached as Exhibit B is a copy of the indictment from the Southern District of New York.

4. Attached as Exhibit C is a copy of the federal arrest warrant for David Carmel, issued on May 21, 2007.
5. Attached as Exhibit D is a copy of a Chippewa County, State of Wisconsin search warrant for David Carmel's residence issued on May 30, 2007.
6. Attached as Exhibit E is a copy of the federal search warrant issued on May 31, 2007 in the Western District of Wisconsin for David Carmel's residence.
7. Attached as Exhibit F is a copy of a Miranda rights form signed by David Carmel and an ICE agent's synopsis of Mr. Carmel's post-arrest statement on May 30, 2007.
8. Attached as Exhibit G is an affidavit by David Carmel regarding his arrest and post-arrest statement.
9. Attached as Exhibit H is an Order, dated September 19, 2007, denying David Carmel's motion in the Western District of Wisconsin to suppress machine guns seized from his residence and denying a motion to dismiss that indictment.

Dated: New York, New York  
May 9, 2008

/s/

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Donald Yannella, Esq.

### Declaration of Service

Donald Yannella, an attorney duly admitted to practice law in the United States District Court, Southern and Eastern Districts of New York, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that the following is true and correct:

(1) On May 9, 2008, I served a copy of the attached motion upon the following individual via ECF:

AUSA Rosemary Nidiry  
One St. Andrew's Plaza  
New York, NY 10007

Dated: May 9, 2008

/s/

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Donald Yannella, Esq.